

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

HB 232 - SB 553

March 23, 2009

SUMMARY OF BILL: Includes the number of units as a basis for grading criminal classification for the use of counterfeit marks or logos. Increases the penalty for manufacture of a good identified by a counterfeit mark with a total value less than \$500 or if the offense involves less than 100 items from a Class A misdemeanor to a Class E felony. Creates a Class C felony if offender knowingly or recklessly causes bodily injury to another during the commission of an offense involving counterfeit marks or logos. Second or subsequent offense is punishable as a Class B felony. Creates a Class B felony if offender knowingly or recklessly causes serious bodily injury or death to another during the commission of an offense involving counterfeit marks or logos. Second or subsequent offense is punishable as a Class A felony.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures - \$282,500/Incarceration*

Assumptions:

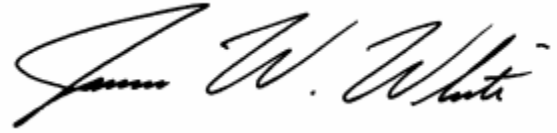
- Currently, it is an offense for a person to use, display, distribute, offer for sale or sell an item or service that is identified by a counterfeit mark. Such offense is graded by theft classification and punishable by fine only. The proposed bill makes all offenses punishable by incarceration. Punishment is increased one classification higher for second or subsequent offenses.
- According to the Department of Correction (DOC), the average operating cost per offender per day for calendar year 2009 is \$59.80. According to DOC, the average post-conviction time served for a Class E felony is 1.63 years, 2.43 years for a Class D, 3.59 years for a Class C, 6.17 years for a Class B, and 14.86 years for a Class A.
- The cost per offender at 1.63 years is \$35,548.11 (\$59.80 x 594.45 days). The cost per offender at 2.43 years is \$52,995.96 (\$59.80 x 886.22 days). The cost per offender at 3.59 years is \$78,426.50 (\$59.80 x 1,311.48 days). The cost per offender at 6.17 years is \$134,727.00 (\$59.80 x 2,252.96 days). The cost per offender at 14.86 years is \$324,636.26 (\$59.80 x 5,428.70 days).

- One offender will be convicted of a Class E felony for manufacture of a good identified with a counterfeit mark with a value less than \$500 and one offender will be convicted of a Class E felony for use or display of an item identified by a counterfeit mark and will serve additional time on their sentences (an increase from a Class A misdemeanor to a Class E felony. The additional cost for increasing the average sentence length from a Class A misdemeanor to a Class E felony for two offenders is \$71,096.22 (\$35,548.11 x 2).
- One offender will be convicted of a Class D felony for manufacture of a good identified by a counterfeit mark with a value of \$1,000 or more but less than \$10,000 for a second or subsequent offense. Such offense will be elevated to a Class C felony and will serve an additional 1.16 years (an increase from 2.43 years to 3.59 years). The additional cost for increasing the average sentence is \$25,430.54 (\$78,426.50 - \$52,995.96). The total additional operating cost is \$25,430.54.
- One offender will be convicted of a Class C felony for use or display of an item identified by a counterfeit mark and will serve 3.59 years. The additional operating cost for one offender is \$78,426.50.
- One offender every five years will be convicted of a Class C felony for knowingly or recklessly causing bodily injury to another during the commission of an offense involving counterfeit marks or logos with 3.59 years served. The annualized time served per conviction is 262.30 days (0.20 annual number of convictions x 1,311.48 days served). The annualized cost per conviction is \$15,685.54 (\$59.80 x 262.30).
- One offender every five years will be convicted of a Class B felony for knowingly or recklessly causing serious bodily injury or death to another during the commission of an offense involving counterfeit marks or logos with 6.17 years served. The annualized time served per conviction is 450.59 days (0.20 annual number of convictions x 2,252.96 days served). The annualized cost per conviction is \$26,945.28 (\$59.80 x 450.59).
- One offender every five years will be convicted of a Class A felony for use or display of an item identified by a counterfeit mark with 14.86 years served. The annualized time served per conviction is 1,085.74 days (0.20 annual number of convictions x 5,428.70 days). The annualized cost per conviction is \$64,927.25 (\$59.80 x 1,085.74).
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. No significant incarceration cost increase will occur due to population growth in this period.

**Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, reading "James W. White". The signature is written in a cursive style with a large, stylized initial "J".

James W. White, Executive Director

/lsc